IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 244 of 1990

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRAVINCHANDRA R RAWAL

Versus

KUMARPAL HARILAL SHAH

Appearance:

MR UTPAL M.PANCHAL for MR D.D.VYAS for the Petitioner

MR PV NANAVATI for the Respondent

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 19/09/2002

ORAL JUDGEMENT

This Revision Application preferred under Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as 'the Rent

Act') arises from the judgment and order dated 25th January, 1990 passed by the learned Appellate Bench of the Small Causes Court, Ahmedabad (hereinafter referred to as 'the Court below') in Appeal No.120/1988. The petitioner before this Court is the appellant - defendant.

The petitioner (hereinafter referred to as 'the defendant') is the tenant of the suit premises being ground floor of a residential house situated at Paldi, Ahmedabad. The suit premises was leased to the defendant for a monthly rent of Rs.175=00. The defendant was also liable to pay municipal and other taxes. In the year 1977 the defendant raised dispute as to the standard rent of the suit premises and filed Standard Rent Application No.1634/1977 in the Court of Small Causes for determination of the standard rent.

The said application was decided on 29th February, 1980. The standard rent of the suit premises was fixed at Rs.175=00. The said order was confirmed on 10th February, 1981 in Revision Application No.42/1980 and was further confirmed by this Court on 28th June, 1982 in Revision Application No.1226/1981. It was also clarified that the defendant was the tenant of the whole of the ground floor of the building except the stair-well. The stair-case and the stair-well were being utilized by the landlord, who is in occupation and is residing on the first floor of the building.

On 14th March, 1981 the landlord, the respondent herein (hereinafter referred to as 'the plaintiff'), gave notice as envisaged under sub section (2) of Section 12 of the Rent Act. The defendant was informed that he was in arrears of rent since 1st March, 1976; that his tenancy was terminated and that he should remit the amount of arrears of rent specified in the suit notice. The suit notice was sent to the defendant by registered post and also under postal certificate. The defendant, however, refused to accept the registered post.

The plaintiff instituted H.R.P. Suit No.3121/1981 in the Court of Small Causes, Ahmedabad for recovery of the possession of the suit premises, arrears of rent and the mesne profits. The plaintiff claimed possession of the suit premises on the grounds of arrears of rent, acquisition of suitable alternative accommodation by the defendant, non-user, creation of nuisance and the bonafide personal requirement. Pending the suit, the plaintiff, on 5th March, 1982, made application Ex.22 under Section 11(4) of the Rent Act

praying for striking off the defence of the defendant. On 29th January, 1982 the trial Court made order under the said application Ex.22. Under the said order, the defendant was directed to deposit a sum of Rs.7,244=15 on or before 28th February, 1982. He was also directed to continue to deposit rent at the rate of Rs.175=00 regularly every month from 1st January, 1982. It was also observed that on defendant's failure to comply with the said order the necessary order under Section 11(4) of the Rent Act shall be made. It appears that the defendant failed to comply with the said order. Consequently, the Court, on 14th August, 1987, made order below application Ex.29 as under :

"The defendant has not deposited any amount in the Court though the order under Section 11(4). Application was passed on 29th January, 1982.

The defence of the defendant is struck off and he is not permitted to appear and defend in suit without the permission of the Court."

The defendant failed to comply with the above order also. However, he made application Ex.98 for permission to defend the suit. Once again, under order dated 28th April, 1988, the Court afforded one more opportunity to the defendant to deposit the entire arrears of rent by 30th June, 1988, but the defendant did not avail of the said opportunity also. Admittedly, the defendant did not pay the arrears of rent then due by 30th June, 1988. The trial had, therefore, to proceed ex-parte. The learned trial Judge, under the judgment and order dated 28th October, 1988, allowed the suit and passed the decree, inter alia, for the possession of the suit premises, the arrears of rent and the mesne profits.

Feeling aggrieved, the defendant preferred Civil Appeal No.120/1988 before the Court below. The said appeal was dismissed under the impugned judgment and order dated 25th January, 1990. Feeling aggrieved, the defendant has preferred the present Revision Application.

Mr.U.M.Panchal, the learned advocate has appeared for the defendant - petitioner. He has submitted that the defence of the defendant was wrongly struck off and, thus, the defendant has been deprived of a fair trial. He has submitted that even when the defence is struck off the defendant would have still an opportunity to cross-examine the witness and to argue against the passing of the decree. He has also submitted that the suit notice is also not legal and valid inasmuch as there

is no express termination of tenancy which should enable the plaintiff to recover the possession of the suit premises. Mr.Panchal has also argued that though a case has been attempted to be made out that the entire ground floor of the suit premiss was given to the defendant on rent, in fact, the possession of part of the suit premises was retained by the plaintiff and the possession of only part of it was handed over to the defendant. In support of his argument, Mr.Panchal has relied upon the judgments of the Hon'ble Supreme Court in the matters of M/S.PARADISE INDUSTRIAL CORPORATION V/S. M/S.KILN PLASTICS PRODUCTS [A.I.R. 1976 S.C. 309] and of LAXMANDAS CHELARAM V/S. HEMDAS HAUROMAL [A.I.R. 1984 GUJ. 154].

As regards the suit notice, I find that the contention is wholly ill-founded. The suit notice in so many express words terminates the tenancy of the defendant. The contention, therefore, requires to be rejected.

In the matter of M/s.Paradise Industrial Corporation (supra), the controversy centered around the words "defence is to be struck off" used by the learned trial Judge in the order made under Application under Section 11(4) of the Rent Act. The Hon'ble Supreme Court observed that "Indeed, one may even say that the phrase "the defence to be struck off" or "struck out" is more advantageous from the point of view of the defendants. Even when a defence is struck off the defendant is entitled to appear, cross-examine the plaintiff's witnesses and submit that even on the basis of the evidence on behalf of the plaintiff a decree can not be passed against him, whereas if it is ordered in accordance with Section 11(4) that he shall not be entitled to appear in or defend the suit except with the leave of the Court he is placed at a greater disadvantage." However, this observation shall not be applicable in the present case in as much as in the present case the learned trial Judge had, on 14th August, 1987, made order in accordance with Section 11(4) of the Rent Act. While upholding the contention raised by the plaintiff landlord, the Hon'ble Supreme Court observed that, "the deposit of the money after the ex-parte decree was passed was wholly irrelevant in considering whether the ex-parte decree passed was a proper one and much more so when the suit itself can be dismissed."

In the matter of Laxmandas Chelaram (supra), this Court has held that the defendant should be put to notice before making order under Section 11(4) of the Rent Act

that failure to comply with the direction to deposit shall entail order as envisaged under Section 11(4) of the Rent Act. This judgment also shall not lend support to the defendant. In the present case, by order made on 29th January, 1982, the petitioner was called upon to deposit the amount of arrears of rent as stipulated therein and also to pay the rent regularly from 1st January, 1982. The defendant was also put to notice that failure to comply with the said direction would entail an order as envisaged under Section 11(4) of the Rent Act. Hence, in my view, in the present case, it can not be said that the defendant was not put to notice or was not given sufficient opportunity to deposit the arrears of rent before making order under Section 11(4) of the Rent Act. It is not even the case of the defendant that for some compelling reasons he could not comply with the direction of the trial Court.

In my view, therefore, the Court below is right in upholding the order made under Section 11(4) of the Rent Act. Further, not only the defendant was in arrears of rent and that he neglected to pay the same in answer to the suit notice or on the first day of hearing of the suit or even within the period specified by the trial Court, but the defendant has failed to pay the arrears of rent and the monthly rent as and when it fell due pending the appeal before the Court below. Thus, the defendant has forfeited his right to protection under Section 12(3)(b) of the Rent Act as well.

As to the extent of the suit premises given to the defendant on rent, there can not be a valid dispute in the present proceedings. As recorded hereinabove, the question has been finally resolved by this Court in the standard rent proceedings initiated by the defendant.

In above view of the matter, the Revision Application is dismissed with costs. Rule is discharged. Interim stay is vacated.

The Registry is directed to return the records and proceedings.

(Ms. R.M. Doshit, J.)

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